

HOUSE BILL REPORT

HB 1381

As Passed House:
January 16, 2012

Title: An act relating to sufficient cause for the nonuse of water.

Brief Description: Regarding sufficient cause for the nonuse of water.

Sponsors: Representatives Warnick, Blake, Hinkle, Taylor, Haler, McCune, Armstrong, Condotta, Johnson, Parker and Shea.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/2/11, 2/16/11 [DP].

Floor Activity:

Passed House: 3/4/11, 97-0.

Floor Activity:

Passed House: 1/16/12, 89-2.

Brief Summary of Bill

- Allows an application for a temporary permit, change, transfer, or amendment to a water right to be sufficient cause for nonuse as it applies to water rights relinquishment.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 13 members: Representatives Blake, Chair; Stanford, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dunshee, Hinkle, Kretz, Lytton, Orcutt, Pettigrew, Rolfes and Van De Wege.

Staff: Jason Callahan (786-7117).

Background:

Water rights may be relinquished when a person, for five or more consecutive years, abandons or voluntarily fails without sufficient cause to beneficially use water in accordance

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with their recorded right's terms. The water code provides a list of sufficient causes for voluntary nonuse that protect a water right from relinquishment. Examples of sufficient causes include: drought or unavailability of water, certain military service, and the operation of legal proceedings.

State law permits water rights or portions of water rights to be changed to other uses or places if the change can be made without detriment or injury to existing rights. The Department of Ecology (DOE) is responsible for processing water right applications, including permits, changes, transfers, or amendments to a water right.

Summary of Bill:

For the purposes of relinquishment, waiting for a final determination from the DOE on a change application for a temporary permit, change, transfer, or amendment to a water right is sufficient cause for nonuse of a water right.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 2, which, because of prior amendments, takes effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) The bill would prevent a water right from relinquishing while the DOE is reviewing an application. Some applications can take years for the DOE to process. Once processed, the applicant may discover that the water right has been relinquished due to nonuse. No one should be penalized for waiting on the DOE to process an application. The bill uses a common sense approach. The bill is good for businesses, especially when a business is trying to make a change or transfer to a water right.

(Opposed) The bill takes a piecemeal approach to relinquishment. Relinquishment reform should be done using a comprehensive approach. Many basins are over-appropriated and relinquishment is the only way to have water return to the system. The bill does not protect senior water rights holders and may create unintended consequences. While relinquishment reform might be important, the bill takes the wrong approach. Broader relinquishment reforms should be part of a comprehensive bill package. The Trust Water Rights Program provides adequate protection from relinquishment.

Persons Testifying: (In support) Representative Warnick, prime sponsor; John Stuhlmiller, Washington Farm Bureau; Wes McCart, Stevens County Farm Bureau; Jack Field, Washington Cattlemen's Association; and Kathleen Collins, Washington Water Policy Alliance.

(Opposed) Dawn Vyvyan, Yakama Nation; Darcy Nonemacher, American Rivers; and Ken Slattery, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.